

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JOSEPH JAMES CATALFANO,

Charging Party,

v.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. S-CE-367

PERB Decision No. 259

November 18, 1982

Appearances; Joseph James Catalfano, in propria persona;
Nancy B. Ozsogomonyan, Attorney (Brown and Conradi) for
Sacramento City Unified School District.

Before Jaeger, Morgenstern and Jensen, Members.

DECISION

JAEGER, Member: Joseph James Catalfano excepts to the attached hearing officer's proposed decision dismissing the unfair practice charge filed by him. After considering the entire record in light of the exceptions, the Board affirms the hearing officer's findings of fact and conclusions of law and dismissal of the charge.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that: the charge filed by Joseph James Catalfano against the Sacramento City Unified School District in Case No. S-CE-367 is DISMISSED without leave to amend.

Members Morgenstern and Jensen concurred.

PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF CALIFORNIA



JOSEPH JAMES CATALFANO,)	
)	
Charging Party,)	Unfair Practice
)	Case No. S-CE-367
v.)	
)	PROPOSED DECISION
SACRAMENTO UNIFIED SCHOOL)	(5/29/81)
DISTRICT,)	
)	
Respondent.)	

Appearances: Joseph James Catalfano, In Pro Per;
Nancy Ozsogomonyan, Attorney (Brown and Conradi), for
Sacramento Unified School District.

Before Sharrel J. Wyatt, Hearing Officer.

PROCEDURAL HISTORY

This case involves alleged discrimination against Joseph James Catalfano because of his union activity. On August 28, 1980, Catalfano filed an unfair practice charge against the Sacramento Unified School District (herein District) alleging violation of Government Code section 3543.5(a)¹ as well as several Education Code sections. On September 1, 1980, that charge was dismissed with leave to amend. On September 15, 1980, Catalfano amended. Following an informal conference on October 7, 1980, the District filed a Motion to Particularize on October 10, 1980,

¹All references are to the Government Code unless otherwise indicated.

and particularization was ordered on October 14, 1980. Catalfano filed a reply to the Order to Particularize on October 14, 1980. A Complaint and Notice of Hearing was issued October 30, 1980, for hearing on December 4, 1980. The District filed an Answer on November 14, 1980, which it amended on November 19, 1980. Catalfano requested a continuance on November 26, 1980, in order to secure legal representation. The hearing was rescheduled for December 17, 1980; however, Catalfano was unable to secure legal representation in the interim.

The issues raised by the unfair practice charge were not resolved and the formal hearing was conducted in Sacramento, California, on December 17 and 18, 1980. The parties filed post-hearing briefs February 20, 1980, and this matter was submitted.

FINDINGS OF FACT

The parties stipulated that the District is an employer and that Catalfano was an employee within the meaning of the Educational Employment Relations Act (hereafter EERA or Act), that he was hired by the District on December 14, 1978 and his last day worked was March 3, 1980.² He began his employment with the District in a temporary custodial position, became a probationary employee in the classification of custodian,

²Official notice is taken that March 3, 1980, was a Monday.

completed his 200 days of probation and was a permanent employee of the District in that classification on his last day worked.

To corroborate his testimony, Catalfano attempted to place a one page letter from D. S. Frick and Associates, Inc. in evidence. That letter purported to reflect Catalfano's answers to specific questions on a lie detector test. It was denied admission in evidence. This bootstrapping of his own testimony was not admitted because it was not corroboration, but a repeat of Catalfano's own testimony and, further, it lacked due process to the District, i.e., notice, an opportunity to attend the application of the test with its own expert and a chance to cross examine Catalfano during application of the test and Frick to determine his expertise in giving the test and the likelihood of the test's accuracy. Thus it was inherently unreliable, lacked due process and was merely a repeat of the same testimony in a different form.

A. Identity of the District Personnel.

The supervisory structure of the District in maintenance and operations includes Albert Artero, supervisor of operation services; Thomas McPoil, the coordinator of maintenance and operations under Artero; Charlie Pugh, field supervisor for operation services, a position in which he visits schools on a regular basis; William Goode, a school plant operations manager I and Catalfano's immediate supervisor. Artero is

Goode's line supervisor. William Chase, principal at Marshall, is Goode's immediate site supervisor. Goode evaluated Catalfano.

B. Evidence of alleged reprisals, discrimination, interference, restraint or coercion; Catalfano's union activity.

When Artero interviewed Catalfano for employment with the District, Catalfano testified that Artero asked him not to join the union because the union was too weak and a waste of money. Catalfano testified that because of Artero's statement, he did not join the union because he was scared of any reprisals that would be inflicted on him if he joined. Artero denies he made any comment about joining a union.³ This is the only evidence of alleged union animus by Artero that was presented.

A statement that the union is weak and a waste of money contains no threat of reprisal. From this statement it cannot be inferred that joining the union could have an adverse impact on Catalfano's employment relationship with the District. As noted hereafter, Catalfano did join the union while still a probationary employee. Catalfano's testimony that he refrained from joining because of fear of reprisal is found, therefore, to be totally lacking in credibility. Based on demeanor and

³McPoil, who participated in 75 percent of the job interviews in maintenance and operations, has never heard Artero mention unions at an interview.

surrounding facts and circumstances, Catalfano's testimony that Artero made such a statement is not found to be credible.

In late December or early January, Catalfano testified that he and Goode, his immediate supervisor, had an argument regarding strikes, that Catalfano favored strikes because it would have a stronger influence on union negotiations and Goode opposed strikes because he would have to clean the entire school by himself if all the other custodians were on strike and that it would be an act of disloyalty to the District because it would interfere with the District. Goode denies this latter statement.⁴ Whether or not Goode made the statements, the statements themselves contain no threat of reprisal. They merely express Goode's opinion on strikes.

However, Catalfano testified that thereafter, Goode increased his workload. He had 11 classrooms and three sets of bathrooms. Every Friday he had to clean the chalk rails and boards. After the argument, Goode told him to start buffing the cafeteria floor and some classrooms every day and clean the chalk rails every day and water the kindergarten area daily, but none of his other assignments was eliminated,, Goode denied

⁴Principal Chase was in the cafeteria daily and heard no such discussion. Wilma Tully works in the cafeteria and heard no such discussion. The same is true of Joyce Blaney and Diane Ellis, the cafeteria cashiers and Margaret Ellis, school secretary. None of these employees ever heard Goode mention unions or strikes.

Catalfano's workload was increased. He testified Catalfano was asked to buff the cafeteria on a couple of occasions and was given relief from classrooms to do so. Goode had discussed workload with Catalfano who indicated his was not too great and he had plenty of time to finish his work. Ellis corroborated that floors were not buffed every day.

Based on testimony and exhibits, it is found that Catalfano's work was not increased and that he was not required to buff floors daily.

Catalfano did the art work on a union recruiting poster from October 1979 through January 1980. No use was ever made of it by the union. He told Goode he was doing it in late December or early January. Goode had no verbal response, but Catalfano said he could tell by his facial expressions that he was pretty much displeased. Goode's attitude became so grinding, according to Catalfano, that he had to ask for a change in hours. On February 26, 1980, Pugh came to the school at Catalfano's request. Catalfano told Pugh that he and Goode were not getting along. He stated the problem was racial and did not mention union activity to Pugh; he claims he did not want his union activity to get back to Artero for fear of reprisals. Catalfano denied he had concern for reprisals over racial problems because that's more numerous than union problems.

Pugh said he recommended the change because it was not proper to have two custodians on day shift and to help resolve the conflict between Catalfano and Goode. Pugh said Catalfano had never called him but that he (Pugh) visits the school on a regular basis. Catalfano and Goode had strifes because Goode had made a comment about low-riders. Pugh, who is Portuguese, told Catalfano he would really have problems if he got upset every time anyone said anything. Goode did not deny he made a comment about low-riders, but he only made one such comment. The low-rider remark occurred in September or October 1979, shortly after Catalfano had transferred to Marshall. Catalfano said he could make his car into a low-rider. Goode could not recall his response but was sure it was not derogatory. In any event, Catalfano was offended.

While still a probationary employee,⁵ Catalfano joined the union at the request of Paul Caisse, a fellow custodian on September 13, 1979. Caisse gave some forms to Catalfano and asked him to help recruit members. Catalfano did solicit other members during October 1979.⁶ Catalfano believed Goode knew

⁵The fact that Catalfano joined the union while still a probationary employee substantiates the finding that the alleged statement of Artero at the employment interview, was not seen as a threat by Catalfano.

⁶Joyce Blaney and Wilma Tully, who work in the cafeteria, were approached by Catalfano and asked if they belonged to the union.

he was doing so because it was a small school. There is no concrete evidence on which it could be found that Goode in fact had knowledge.

Catalfano's charge alleges he was a shop steward. He testified he believed he was. Nothing in the record indicated he was, however.

Betty Osborn is active in SEIU and has attended all meetings. There is no official shop steward on the list for Marshall, but she acts unofficially by putting information for SEIU in boxes, passing messages. She has never seen Catalfano at any union meeting.

Jeff Ellis, whose shift overlaps with Catalfano's, belongs to the same union as Catalfano and was not aware that Catalfano belonged or was active, although they spoke every night. Chase, the principal, was not aware of Catalfano's union activity.

Thus, other than Catalfano's few inquiries about whether fellow employees belonged to the union in October 1979, it is clear that most employees at Marshall were unaware that Catalfano had joined the union. Artero supervises over 300 maintenance and operations employees and has no knowledge of who does or does not belong to a union. He was unaware of any union activity on Catalfano's part.

At his hearing before the Employment Development Department (herein EDD) to obtain unemployment compensation, Catalfano

never mentioned union discrimination as a reason for leaving his employment. At that hearing his sole reason for leaving his job was because he thought he was fired.

Catalfano never mentioned he was being discriminated against for union activity to Paul Caisse, who had induced him to join the union and observed his work on the union poster.

Nor did he seek help from the union until long after his employment terminated. His reason for failing to go the union was that he did not know anything about the grievance procedure. He had only read the part of the contract dealing with wages, holidays, etc.

C. Catalfano's Problems with Job Performance.

Goode testified there was friction between him and Catalfano because of Catalfano's job performance: failure to secure rooms, attitude toward Goode and toward his work, inconsistent quality, tardiness, excessive absences and that there were counseling sessions 2-3 times per week. Goode even offered to pick Catalfano up and give him a ride to work to get him there on time. Goode indicated he was not aware of Catalfano's union activity.

Catalfano also lied on his job application, omitting a job from which he had been fired and denying he had ever been discharged from employment. He also stated he was a high school graduate when he was not. The apparent purpose of this evidence is to show that he is unlikely to be an honest

witness. Because employees eager for employment may well be less than honest, the fact that he was not totally honest on his application was not a consideration in resolving credibility. This evidence of dishonesty did not carry over into other areas of his employment.

On December 1, 1979, Catalfano was evaluated. The evaluation indicated that "performance fully meets standard requirements." It indicated he was making genuine effort to correct tardiness and carry out requests of his supervisors. In November he had received a letter indicating he had failed to lock two doors. Goode was aware that one of the doors had a defective latch and did not always lock. Securing doors was Catalfano's responsibility on the date in question because Jeff Ellis, a co-worker was absent.

Thereafter absences and tardiness continued to be a problem. On February 16, Catalfano said he would be absent but reported for work. Both he and the substitute were paid. On February 22, it happened again. Goode requested that Catalfano's pay be docked. When Catalfano left the District, he had already used four and a half more days of sick leave than he had earned.

In February, Goode reprimanded Catalfano verbally for leaving windows open. Catalfano testified that it was not his responsibility to lock up the school. When a teacher spoke to Catalfano about windows, he stated that he closed all his

windows and someone must have been coming after him and opening them up. He was warned about leaving windows open more than once. When Goode spoke to him about open windows, he said he had checked that particular one and it had been closed and locked. When the issue came up again, he felt these instances were "concocted, made up."

Catalfano was of the opinion that Jeff Ellis, a fellow custodian whose mother, Margaret Ellis, was school secretary, was placed on the job to watch him and report to the principal.

The way in which Catalfano performed his work, his absences and tardiness, whether he secured doors and windows are related to job performance and a basis for the employer to set standards of behavior for employees. Factually, there is no basis for finding a connection between this and alleged union animus. Whether Catalfano failed to secure windows or whether someone came behind him and made changes in work he had performed, did create problems in his employment relationship. There is no connection between those problems and his participation in the union, however.

D. Incidents Surrounding Catalfano's Last Day Worked.

On Friday, February 29, 1980 Catalfano was notified his request for change in hours was approved. That day he injured his wrist at work and asked to leave early because it was hurting. He left at around 3:00 p.m. Between 4:00 and 6:00 p.m. Catalfano testified that he received a call from

Artero saying "Joe, if you don't quit, I'll fire you." He could not state that the caller identified himself but said he recognized the voice as that of Artero. He had spoken to Artero on the phone three times: once a year and a half earlier regarding transfer, once when a night custodian quit (before Ellis came) and once when Goode was absent and he called for a substitute.

Artero denied he called Catalfano on February 29, 1980. Based on this record, it is found that Artero did not call Catalfano and make this threat. While Catalfano may have received such a call from some unidentified caller, based on Artero's demeanor and testimony and the lack of motivation for Artero to make such a call, it is concluded Artero was not the caller.

The following Monday, March 3, 1980, Catalfano returned to work on his regular shift, from 11:30 a.m. to 8:00 p.m. Goode asked him how his wrist was, he said it was a little sore, and Goode phoned Artero who was not available. He spoke to Thomas McPoil who asked Catalfano why he did not go to a doctor. Catalfano told McPoil his wrist was not hurting and requested that he be permitted to finish his shift since he was already at work and see a doctor the following day. McPoil agreed and Catalfano finished his shift.

Chase, the principal, had met with Catalfano regarding tardiness, absences, failure to secure windows and job

performance and had discussed these problems with Goode. On March 3, he and Goode met with Catalfano regarding absences and tardiness and to give him a pep talk in an effort to increase the quality and consistency of his work. Catalfano was told of three options available to him: he could improve, they could document the problems and dismiss him, or he could quit.

Later that day, Chase met with Catalfano and asked him if he had made a decision and Catalfano said yes, he was going to resign. Chase said that was not the only alternative but Catalfano said his mind was made up.

Catalfano could not recall speaking with Chase on March 3 after he met with Chase and Goode earlier in the day. Nonetheless, Chase's testimony is found to be credible.

On March 3, Ellis testified that Catalfano said it was his last night, he was quitting.⁷ At the end of his shift, Catalfano called the school security police and turned in his keys to Officer Bender because he would not be working the following day, according to Catalfano. Jeff Ellis was present when he turned his keys in. Catalfano told Officer Bender he quit and wanted to turn his keys in. Officer Bender asked Catalfano why he didn't call Artero, and Catalfano said he did not want to disturb his beauty rest. Security Officers

⁷Catalfano claims he did not see Ellis on March 3 at 8:01 p.m.. Based on demeanor and the fact that Ellis began his shift at 7:00 p.m., this conflict is resolved in favor of Ellis.

Daryl Bender and Harold Jones had both arrived at Marshall in response to Catalfano's call. When Jones asked Catalfano if he was going on to bigger and better things and Catalfano responded, "something like that." Catalfano did not say he was going to be absent the next day. Ellis was present and corroborated the conversation with the security guards.

Catalfano denies he ever made a verbal resignation and says he turned in his keys to Officer Bender⁸ so Goode would have an extra set. Catalfano claims his only intent on March 3 was to see a doctor on March 4 as McPoil requested so he could get back to work.

Catalfano's testimony is not found to be credible because it is in direct conflict with that of Chase, Bender and Ellis and because the accompanying action of turning his keys in is not consistent with intent to return to the job at Marshall. Catalfano's school, James Marshall, had a substitute set of keys. Catalfano knew this because he had used the extra keys when he forgot his own. He had never before turned in his keys at Marshall or in this fashion. It has not been the practice to turn in keys for absences. Catalfano is the first employee who ever turned in keys to security personnel. Thus, his

⁸ Officer Bender who had never met Catalfano before, was a police officer with the City of Sacramento for over 20 years, accustomed to making accurate written reports. His report corroborated his testimony.

explanation that he left the keys because he intended to go to the doctor the following day is neither feasible nor credible.

On Tuesday, March 4, 1980, Catalfano called Artero to find out why Artero had made the telephone statement to him on February 29. He claimed this was his first opportunity to call. According to Catalfano, instead of answering Catalfano's inquiry, Artero told him to submit a formal resignation to the personnel office or he would do it for him. According to Artero, when Catalfano called Artero, he said "how do you like the way I resigned?" Artero said it was unconventional and told Catalfano to resign in good standing by putting a formal resignation so he would be eligible for future employment, or Artero would document termination.

This conflict in testimony is resolved in favor of Artero based on demeanor and based on the fact that Artero's version is consistent with the precipitous method with which Catalfano left his employment on the previous day.

Later that day, Catalfano again called Artero and requested an emergency leave⁹ of absence. Artero responded that District policy required three years or more to qualify for such a leave and even if Catalfano had the prerequisite, he would not grant him the leave. Artero said he would not

⁹Catalfano testified he wanted emergency leave for illness or injury. Artero's response was applicable to another leave policy.

recommend a leave of absence for any employee because it's a hardship on other employees and in Catalfano's case, because he walked off the job.

Catalfano did not go to a doctor on March 4 because he lost all interest in it after speaking to Artero and the pain had left him. On March 5, Catalfano turned in his work shirts. Two months later, he was notified by the District that they accepted his verbal resignation. When Catalfano was notified his verbal resignation was accepted, he wrote a lengthy statement to Dr. Giugni, superintendent. That statement does not mention union activity.

Under the District's rules, after five days' absence without leave, a notice to terminate is sent to personnel by Artero. Some time after the board of education took action on March 24, 1980, the District notified Catalfano that they accepted his resignation. It was as the result of this notice that Catalfano sought help from the union.

At a subsequent EDD hearing to obtain unemployment compensation, Catalfano said he quit because he was going to be fired. Artero testified at the PERB hearing that the District was not about to dismiss Catalfano. However, Goode and Artero had discussed problems with Catalfano for several weeks and if Catalfano had not quit, he had recommended that Goode begin to evaluate and start taking steps to terminate.

ISSUE

Whether the District imposed or threatened to impose reprisals discriminated against, interfered with, restrained or coerced Joseph James Catalfano because of the exercise of rights guaranteed by the Act.

CONCLUSIONS OF LAW

It is concluded that this unfair practice charge should be dismissed because the charging party has failed to establish a prima facie case by a preponderance of the evidence as required by California Administrative Code, title 8, section 32178. Catalfano's union activity was minimal. He joined, asked some fellow employees if they belonged, and prepared a poster, a passive, non-visible activity. He did not attend meetings, was not known by fellow employees as being active in the union (indeed, most fellow employees were unaware of his membership) and was not involved in grievances. Most noteworthy, nothing was said or done during the critical period just before his employment terminated that would either support a finding that Catalfano was pressured to quit or was fired for union activity.

Instead, it is clear that Catalfano harbored resentment toward Goode for a comment on low-riders, that Catalfano was counseled by Goode, Chase and Pugh regarding employment problems, especially failure to secure doors and windows, **absences** and tardiness and the inconsistent quality of his **work**. On the critical day, March 3, 1980, he was called in and

counseled by Chase and Goode and later told Chase, Ellis and the security guards he was quitting. He told the two security officers he was going on to bigger and better things. Whether Catalfano believed he was fired, intended to quit, or intended to go to the doctor when he left his employment on March 3, the facts simply do not support a finding that he was forced to quit or was terminated because of activity protected by the Act.

PROPOSED ORDER

Based on the findings of fact, conclusions of law and the entire record in this matter, the unfair practice charge filed by Joseph James Catalfano against the Sacramento City Unified School District is hereby **DISMISSED**.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on June 22, 1981, unless a party files a timely statement of exceptions. See California Administrative Code, title 8, part III, section 32300. Such statement of exceptions and supporting briefs must be actually received by the Executive Assistant to the Board at the headquarters office in Sacramento before the close of business (5:00 p.m.) on June 22, 1981 in order to be timely filed. See California Administrative Code, title 8, part III, section 32135. Any statement of exceptions and supporting brief must be served

concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, sections 32300 and 32305, as amended.

DATED: May 29, 1981.

Sharrel J. Wyatt
Hearing Officer